

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7227/2019

**SANDHYA D/O DIGAMBAR MACHEWAD
VERSUS
THE STATE OF MAHARASHTRA DEPARTMENT OF TRIBAL
DEVELOPMENT AND OTHERS.**

**...
Adv.A.S.Golegaonkar and M.A.Golegaonkar for petitioner.
AGP for R.1 to 3 & 5 : K.B.Jadhavar
Adv. For R.4. : S.G.Karlekar.**

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**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 26/06/2019

PER COURT :

The tribe claim of the petitioner as Koli Mahadev (Scheduled Tribe) is invalidated. Aggrieved thereby, the present petition.

2] Mr.Golegaonkar, learned advocate for the petitioner submits that the validity certificates are issued to father of the petitioner and 3 real paternal uncles of the petitioner by the committee. The committee had invalidated the caste claim of the real sister of the petitioner, the same was assailed before the Principal seat at Bombay in Writ Petition No.10349/2017. The Division Bench at Principal seat at Bombay under order dated 3/10/2017 allowed the said Writ Petition and directed the committee to issue validity certificate to the real sister of the petitioner Sneha daughter of Digambar Machewad. According to the learned counsel all this evidence has been discarded. The petitioner is entitled for issuance of validity certificate.

3] The learned AGP submits that the committee has considered the validity in favour of the father and 3 real paternal uncles so also of the real sister on the basis of judgment of this Court. The committee is of the opinion that the judgment of this Court in the case of real sister of the petitioner in Writ Petition No.10349/2017 requires to be reviewed. According to the learned advocate there are some over-writings in the entries of the father of the petitioner wherein the word “Mahadev” appears to have been subsequently added so also in respect of the record of the grand father of the petitioner. The petitioner also cannot prove the affinity test. In many of the relatives of the petitioner the caste is recorded as Koli. All these aspects are considered by the Committee.

4] We have considered the submissions. We also considered the judgment and the record.

5] The Division Bench of this Court at the Principal seat had considered the vigilance report and all the documents while dealing with Writ Petition No.10349/2017 filed by real sister of the petitioner. The Division Bench in the said case observed that the validity certificate is issued in favour of father Trimbak, so also uncles Dayanand, Pandhari and Santosh. The Division Bench relied on the judgment of this Court in the case of **Apoorva D/o Vinay Nichale V/s Divisional Caste Certificate Scrutiny Committee No.1 and others reported in 2010 (6) Mh.L.J. 401** and the judgment of Apex Court in the case of **Raju R. Wasave V/s M.D.Bhivapurkar reported in (2008) 9 SCC 54.** The Division Bench of this Court also considered the reliance placed by the Committee on the two documents of the petitioners third cousin viz. Laxman, Vithal and it

was observed by the Division Bench that they belong to a different branch. After considering all these aspects, this Court directed the committee to issue validity to the real sister of the petitioner. The same finding would bind the committee unless the order of the Division Bench of this Court in Writ Petition No.10349/2017 filed by the sister of the petitioner is reviewed. It is also trite that the affinity test is not a litmus test as held in the case of Anand Katole V/s Committee for Scrutiny and Verification of Tribe Claim reported in 2011 (6) Mh.L.J. (SC) 919.

6] In light of above, the impugned judgment and order passed by the Committee is quashed and set aside. The committee shall issue validity certificate to the petitioner of Koli Mahadev (Scheduled Tribe) considering the fact that the petitioner is seeking admission in the professional course. In case the committee decides to review the order passed in W.P.No.10349/2017 dated 3/10/2017 and in case said judgment is reviewed by this Court then the committee may move in the case of the present petitioner also.

7] Writ Petition is accordingly allowed. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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